

RESOLUTION NO. R-65-20

RESOLUTION OF THE MAYOR AND CITY COUNCIL
DENYING CONCEPT SITE PLAN SP-8415-2020, LOCATED
AT 10 AND 14 EAST DEER PARK DRIVE, FOR PROPERTY
CONSISTING OF APPROXIMATELY 2.06 ACRES
AND ZONED CORRIDOR DEVELOPMENT (CD)

SP-8415-2020

OPINION

Concept site plan application SP-8415-2020 for the subject properties consisting of Block V, Lot 1 and parcel P861, located at 10 and 14 East Deer Park Drive, Gaithersburg, Maryland 20877 ("Property") which is zoned Corridor Development (CD Zone), has come before the Mayor and City Council for consideration. The City Council's authority in this matter is pursuant to § 24-160G.6(c)(1) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes the City Council to conduct a public hearing and either approve or deny the concept site plan with or without conditions. The application was submitted to the City Planning and Code Administration on February 10, 2020, and was designated as SP-8415-2020.

OPERATIVE FACTS

A. Background

The subject properties were annexed into the City of Gaithersburg in 1947. Ordinance O-10-01 (Z-292) comprehensively rezoned the properties to the CD Zone as part of the Frederick Avenue Corridor Master Plan. Site Plan S-684 was approved on May 20, 1987 for the construction of the existing funeral home at 10 East Deer Park Drive. The residential structure located at 14 East Deer Park was constructed in 1974.

B. Current Application:

On February 10, 2020, Robert DeVol ("Applicant") submitted an application for concept site plan, SP-8415-2020. The subject application proposes converting the existing single-family house at 14 East Deer Park Drive to a funeral home, with associated viewing parlors and crematorium. The plan also includes expansion of the existing parking lot and other minor site improvements.

The Mayor and City Council conducted a virtual public hearing in accordance with the Governor's Emergency Orders and County Health Orders related to the COVID-19 Pandemic, for application SP-8415-2020 on August 3, 2020. During the course of the hearing the public voiced a number of concerns and questions regarding various aspects of the subject plan:

- The allowed use of crematoriums as part of a funeral home in the CD zone;
- The environmental impacts and regulations of the associated crematorium;
- The impact of expanding the funeral home and adding a crematorium on the adjacent neighborhood;
- Other jurisdiction's regulations for similar use; and
- The required public hearing notifications.

At the conclusion of the hearing, the City Council, announced by motion, the closing of their record at 5 PM on September 2, 2020 with policy discussion and final action anticipated for September 21, 2020. The City Council, at the request of the Applicant, granted by motion an extension of the record during the August 17, 2020 regular meeting, until 5 PM on September 16, 2020, with policy discussion and final action anticipated on October 5, 2020. A subsequent request by the Applicant to reopen the Mayor and City Council record until 5 PM on October 7, 2020 was denied by motion by the City Council during the September 21, 2020 regular meeting.

C. Evaluation and Findings

The City Council, upon careful review of the evidence of record, agrees with the findings and conclusions for concept site plan SP-8415-2020 by City Staff. The City Council finds those recommendations to be well reasoned and adopts and incorporates their findings as part of this action. The City Council further agrees with City Staff in that the procedures governing the application for the CD Zone and approvals necessary to seek building permits are subject to a multi-step process and that, if approved, this would only be one of several steps of the process, which subsequently includes Preliminary and Final Site Plan reviews and approvals.

In reviewing the subject application and considering all of the evidence in the record for concept site plan SP-8415-2020, the City Council finds the application and development proposal does not meet or accomplish all of the purposes, objectives, and minimum standards and requirements of the CD Zone that are set forth in Chapter 24 (Zoning) Article III, Division 22 of the City Code.

The City Council finds that the application meets the submission requirements as set forth in § 24-160G.6(c)(1) of the City Code in that:

1. The Applicant filed, together with prescribed application fee, a concept plan and contained the information and items described in the concept plan checklist established by the city manager or his/her designee;
2. The City Council has conducted a public hearing on the application subject to the notification procedures as required for local map amendments.

The City Council, however, finds from the evidence of record that the application for concept site plan, SP-8415-2020, as currently amended, satisfies some but does not fulfill all of the findings required for approval under § 24-160G.7(b) of the City Code:

- (1) The plan is substantially in accord with architectural, signage, lighting, streetscape, parking and other regulations, requirements and guidelines adopted by the city council for applicable corridor area:

The plan will meet the development standards of the CD zone by expanding the existing onsite parking lot behind the building, which will reduce reliance of overflow parking on the adjacent streets. The plan will in some ways maintain the existing residential character of the structure, by including the addition to the rear of the building and utilizing similar building materials commonly found within the surround neighborhood. The plan will however, include a substantial chimney or stack for the furnace operation related to the crematorium use. Without the chimney, the one-story 600 square foot addition would not increase the height of the existing structure and will be below the thirty-five feet height limit for the Southern Residential District. The plan will extend an existing pedestrian sidewalk along the frontage of 14 East Diamond Avenue.

- (2) The plan does meet or accomplish all of the purposes, objectives and minimum standards and requirements of the zone:

- a) Application SP-8415-2020 will improve the Property by expanding the funeral home use, which is a permitted use in the CD zone.
- b) Application SP-8415-2020 will expand the existing funeral home business, which has been in operation in the City for over thirty years, by adaptively reusing and expanding an underutilized vacant building.
- c) Application SP-8415-2020 will enhance pedestrian connectivity along East Deer Park Drive by constructing a new five-foot sidewalk.

- d) Application SP-8415-2020 will in some ways visually maintain the residential character of the existing building by placing the 600 square foot addition to the rear of the building, utilizing building materials typically used in residential buildings, and by maintaining the existing front residential façade of the structure.
 - e) Other than the chimney, application SP-8415-2020 will provide a one-story 600 square foot addition which will not increase the height of the existing structure and will be below the thirty-five feet height limit for the Southern Residential District.
 - f) The project will expand an existing funeral home business and provide a mix of uses within the corridor.
- (3) The plan is in accord with the area master plan and any accompanying special condition or requirements in said master plan for the area under consideration:

The Properties were not included in the 2009 Master Plan as a specific map designation. The Properties were included in the 2001 Frederick Avenue Corridor Land Use Plan. The Properties were located within the Southern Residential District and are part of the larger Map Designation F. The master plan described the area as mixed-use development, including an existing funeral home, multi-family apartment building, two single-family dwellings that contain businesses and a small retail center. The Master Plan provides for redevelopment of the area to multi-family, light commercial uses, or office uses. The Master Plan further provides that development is recommended to be in keeping with the residential character of this portion of the corridor. Offices, light retail or live-work units in low-rise buildings are examples of what is envisioned. The master plan recommends adoption of the commercial-office-residential land use designation and rezone the parcels to CD. The proposed plan is in accordance with the 2001 Frederick Avenue Corridor Master Plan by converting an existing one-story residential building to a funeral home to expand the services of the existing DeVol Funeral Home business to include a crematorium use. The plan maintains the low-rise residential character of the area by maintaining the existing residential facade of the structure, utilizing vinyl siding and brick which are common residential building materials found within the surround neighborhoods, and locating the 600 square foot addition in the rear of the building. The current funeral home is a low-intensity use, compatible with the surrounding area and similar to the envisioned uses mentioned in the Master Plan.

- (4) The plan will not be internally and externally compatible and harmonious with existing and planned uses in the CD zoned area and adjacent areas:

The application to add the crematorium use is not compatible and harmonious with the adjacent area. Visually, the project maintains the existing residential façade, size, and scale of the structure, utilizes building materials commonly found within the surround neighborhoods, and locates the 600 square foot addition in the rear of the building. The use, however, creates significant conflicts with the surrounding area, which includes nearby residential apartments and single family housing based on the size of the chimney, furnace operations and emission of smoke, particulates and potential odors as a crematorium. The expansion of the funeral home use and addition of the crematorium increases the intensity of the use of the property by increasing vehicular and pedestrian traffic. In addition, with residential houses in close proximity to the proposed crematorium, use is not compatible and harmonious with existing uses in the CD zone and adjacent areas due to the environmental impacts of the furnace operations.

- (5) That existing or planned public facilities are adequate to service the proposed development contained in the plan:

This application complies with the City's adequate public facilities requirements, as follows:

1. **Traffic Impacts-** The City's Traffic Impact Study Standards and Regulations require an approved Traffic Impact Statement (TIS) in conjunction with a schematic development plan or preliminary plan and therefore is not required at this time. Staff has determined the project is unlikely to require TIS and that the project complies with the requirements of the Gaithersburg Traffic Impact Study standards.
2. **Adequacy of School Capacity-** The adequacy of school capacity is not applicable for this application because the project is for a funeral home. Therefore, the proposed development is exempt from the school test of the Adequate Public Facilities.
3. **Water and Sewer Service-** The Properties are currently served by Category W-1 and S-1 of Washington Suburban Sanitary Commission (WSSC) services. As such, water and sewer services are adequately provided to the properties.
4. **Fire and Emergency Services-** The Properties are located within a ten-minute (10-minute) response time of Station 3 (Rockville), Station 8 (Gaithersburg), Station 28 (Gaithersburg) and Station 32 (Travilah).

- (6) The development staging or phasing program, if any, is adequate in relation to the provision of public facilities and private amenities to service the proposed development:

The adaptive reuse of the existing structure for a new funeral home and construction of a 600 square foot addition and associated parking lot will be completed in two phases. The first phase includes the conversion of the single-family structure, the construction of a 600 square foot addition, and minor improvements to the site to accommodate ADA access to the building. The second phase includes the expansion of the existing parking lot and construction of a stormwater management facility. The new funeral home will be served by existing utilities on the property.

- (7) That the plan, if approved, would not be in the public interest:

The addition of a crematorium on the Property, requiring a furnace, creating smoke, particulates and odor emissions, are not compatible with the surrounding residential area. Visually, the plan will add a substantial chimney to the existing building at 14 East Deer Park Drive which will not be compatible with the surrounding residential community. The expansion of the use of the Property will create increased vehicle and pedestrian impacts on the neighboring properties. The record indeed includes a significant number of public comments from the surrounding community in opposition to the plan, demonstrating that the project is not in the public interest. The majority of comments in the record, both from the applicant and the surrounding community, outline the potential externalities that could be associated with the project. It is the Council's authority to determine if the proposed plan is in the public's interest by concluding the project is appropriate for the specific site, enhances the City's economic vitality, improves quality of life, and furthers the City's goals and policies. Based on the information within the record and the significant number of public comments in opposition to the project, the Council finds that the record does not show that the plan will be in the public interest and will not adversely affect the surrounding community.

- (8) The existing buildings with historic significance are considered for preservation and retention pursuant to the city's historic preservation ordinance.

The existing residential building at 14 East Deer Park Drive was constructed in 1974 and is not over 50 years old. The property was not identified in the Historic Preservation Element of the Master Plan.

CONCEPT SITE PLAN SP-8415-2020

RESOLUTION

NOW, THEREFORE BE IT ORDAINED by the City Council of Gaithersburg, Maryland, that SP-8415-2020, being an application filed by Robert DeVol, requesting approval of Concept Site Plan, is hereby denied.

ADOPTED by the City Council this 5th day of October, 2020.

DocuSigned by:

Jud Ashman

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JUD ASHMAN, MAYOR and
President of the Council

THIS IS TO CERTIFY, that the foregoing Resolution was adopted by the City Council, in public meeting assembled on the 5th day of October, 2020.

DocuSigned by:

Tanisha Briley

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Tanisha Briley, City Manager